

Introduced by Senator Dunn

February 21, 2003

An act to amend Sections 1279, 1280, 1280.1, and 1280.2 of, and to add Sections 1266.2 and 1279.1 to, the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1005, as introduced, Dunn. Fees: inspections: deficiencies: corrections.

Under existing law, a “health facility” means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical and mental, as specified, and includes, among others, general acute care hospitals, acute psychiatric hospitals, and special hospitals, as defined. These facilities are regulated by the State Department of Health Services. A violation of the law relating to health facilities is a misdemeanor.

This bill would require the department to levy a fee on these health facilities in order to ensure an adequate level of licensing and certification staff to perform inspections, as required by this bill.

Under existing law, a general acute care hospital, acute psychiatric hospital, and special hospital, as defined, are required to pay an annual fee, as specified, plus \$8 per bed, with each new and renewal application for a license.

This bill would require that these facilities, when applying for a new license or a renewal of a license, pay a fee that may not exceed \$5 per bed.

This bill would require the department to seek federal financial participation to match the above fees.

Existing law requires inspections, as specified, of health facilities, as specified, for which a license or special permit has been issued, with the exception of health facilities, other than general acute care hospitals, that are certified to participate in the Medicare or medicaid program.

This bill would require that the department ensure that periodic inspections conducted pursuant to existing law are not announced in advance of the date of the inspection. This bill would authorize the department to conduct inspections jointly with other entities, as specified, but would require that if the other entity provides notice in advance of the periodic inspection, the department shall conduct an additional periodic inspection that is not announced or noticed to the health facility.

Existing law requires the department to adopt regulations that establish minimum, specific, and numerical licensed nurse-to-patient ratios by licensed nurse classification and by hospital unit for general acute care hospitals, acute psychiatric hospitals, and special hospitals, as defined.

This bill would require the department to inspect for compliance with these requirements when conducting the above state or federal periodic inspections of a general acute care hospital.

Existing law exempts from periodic inspections specified health facilities, other than general acute care hospitals, that are certified to participate in the Medicare or medicaid program.

This bill would establish a complaint procedure for complaints involving health facilities, as defined, would establish inspection procedures and requirements, would authorize the department to issue citations, as specified, would require the department to notify the complainant and licensee in writing of the department's determination as a result of the inspection or investigation, would establish an informal conference procedure for resolution of complaints, at the request of the complainant, by the designee of the director for the county in which the health facility is located, and would establish appellate procedures for the complainant.

Existing law authorizes the department to provide consulting services, upon request, to any health facility, to assist in the identification or correction of deficiencies or the upgrading of qualify of care provided by the health facility. Existing law requires the department to notify the facility of deficiencies, and authorizes the department to take action to revoke or suspend the facilities license if the deficiencies are not corrected within a reasonable time.



This bill would provide that the time to correct the deficiencies may not exceed 180 days.

Existing law requires that if the health facility is a general acute care hospital, acute psychiatric hospital, or special hospital, as defined, and the facility fails to implement a plan of correction, agreed on by the facility and the department, for deficiencies, the department may order implementation of the plan. Existing law also provides that if the facility and the department fail to agree on a plan of correction within a reasonable time, and if the deficiency poses an immediate and substantial hazard to the health or safety of patients, the director may take action to order implementation of a plan of correction devised by the department.

This bill would provide that the time to implement the plan of correction may not exceed 180 calendar days, that the time to agree on a plan shall not exceed 60 days, and that the director may take action to order implementation of a plan of correction devised by the department if the deficiency poses a significant, rather than immediate and substantial, hazard to the health or safety of patients.

Existing law provides that if a condition within a general acute care hospital, acute psychiatric hospital, or special hospital, as defined, poses an immediate and substantial hazard to the health or safety of patients, the department may make specified orders if the facility was cited after January 1, 1994.

This bill would, instead, authorize these actions if the deficiency poses a significant hazard, or if the department receives a complaint about a similar condition within 12 months of a complaint or a deficiency, or if the completion of a plan of correction for a significant hazard has not been documented by the department within 190 calendar days of the deficiency. This bill would provide that these provisions would not apply to a deficiency for which a facility was cited prior to January 1, 2004.

Existing law requires that reports on the results of each inspection of a health facility shall be prepared by the inspector or inspector team and shall be kept on file in the department along with the plan of correction and health facility comments. Existing law authorizes the inspection report to include a recommendation.

This bill would require that the inspection report include a recommended date for reinspection in order to ensure compliance with the plan of correction, that a reinspection be conducted within 180 days



of the deficiency, and that a reinspection may be conducted during a periodic inspection, discussed above.

Existing law provides that if a general acute care hospital, acute psychiatric hospital, or special hospital, as defined, fails to correct a deficiency that pose an immediate and substantial hazard to the health or safety of patients, within the time specified in the plan of correction, the department may levy fines, as specified.

This bill would provide that the time period for correction must be the lesser of 180 days or the time specified in a plan of correction, and that failure to correct a deficiency may be substantiated by a subsequent complaint about a condition similar to the one that gave rise to the prior deficiency.

Existing law states it is the intent of the Legislature that nothing in specified sections of law shall be construed to require the retrofitting of hospital buildings built prior to January 1, 1994, to meet seismic standards in effect on that date.

This bill would change that date to January 1, 2004.

Because a violation of the provisions of the bill would constitute a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1266.2 is added to the Health and Safety
- 2 Code, to read:
- 3 1266.2. (a) In order to ensure an adequate level of licensing
- 4 and certification staff to perform inspections pursuant to the
- 5 requirements of this article, and to enforce the requirements of this
- 6 chapter, the department shall do both of the following:
- 7 (1) Levy a fee on health facilities licensed pursuant to
- 8 subdivisions (a), (b), and (f) of Section 1250, not to exceed the
- 9 actual and reasonable costs of enforcement of this article.



(2) Require that a facility applying for a license pursuant to paragraph (1) of subdivision (a) of Section 1266 pay a fee that may not exceed five dollars (\$5) per bed, not to exceed actual and reasonable costs of enforcement of this article.

(b) The department shall seek federal financial participation consistent with Title XIX (42 U.S.C. Sec. 1396 et seq.) of the federal Social Security Act to match the fees paid pursuant to subdivision (a).

SEC. 2. Section 1279 of the Health and Safety Code is amended to read:

1279. (a) Every health facility for which a license or special permit has been issued, except a health facility, as defined in subdivisions (b) to (k), inclusive, of Section 1250, that is certified to participate either in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, or in the medicaid program under Title XIX (42 U.S.C. Sec. 1396 et seq.) of the federal Social Security Act, or both, shall be periodically inspected by a representative or representatives appointed by the state department, depending upon the type and complexity of the health facility or special service to be inspected.

(b) If the health facility is deemed to meet standards for certification to participate in either the Medicare program or the medicaid program, or both, because the health facility meets the standards of an agency other than the Health Care Financing Administration, then, in order for the health facility to qualify for the exemption from periodic inspections provided in this section, the inspection to determine that the health facility meets the standards of an agency other than the Health Care Financing Administration shall include participation by the California Medical Association to the same extent as it participated in inspections as provided in Section 1282 prior to the date this section, as amended by S.B. 1779 of the 1991–92 Regular Session, becomes operative.

(c) ~~Inspections~~—*Except as provided in subdivision (d), inspections shall be conducted no less than once every two years and as often as necessary to insure ensure the quality of care being provided.*

(d) ~~However, for~~ *For* a health facility specified in subdivision (a) or (b) of Section 1250, inspections shall be conducted no less

1 than once every three years, and as often as necessary to ~~insure~~
2 *ensure* the quality of care being provided.

3 (e) During the inspection, the representative or representatives
4 shall offer such advice and assistance to the health facility as they
5 deem appropriate.

6 ~~For~~

7 (f) For acute care hospitals of 100 beds or more, the inspection
8 team shall include at least a physician, registered nurse, and
9 persons experienced in hospital administration and sanitary
10 inspections. During the inspection, the team shall offer such advice
11 and assistance to the hospital as it deems appropriate.

12 (g) *The department shall ensure that a periodic inspection*
13 *conducted pursuant to this section is not announced in advance of*
14 *the date of the inspection. An inspection may be conducted jointly*
15 *with inspections by entities specified in Section 1282. However, if*
16 *the department conducts an inspection jointly with an entity*
17 *specified in Section 1282 that provides notice in advance of the*
18 *periodic inspection, the department shall conduct an additional*
19 *periodic inspection that is not announced or noticed to the health*
20 *facility.*

21 (h) *Notwithstanding any other provision of law, the department*
22 *shall inspect for compliance with Section 1276.4 during a state or*
23 *federal periodic inspection, including, but not limited to, an*
24 *inspection required under this section. This inspection*
25 *requirement shall not limit the department's authority in other*
26 *circumstances to cite for violations of Section 1276.4 or to inspect*
27 *for compliance with Section 1276.4.*

28 SEC. 3. Section 1279.1 is added to the Health and Safety
29 Code, to read:

30 1279.1. (a) (1) Upon receipt of a written or oral complaint
31 involving a health facility, as defined in Section 1250, the
32 department shall assign an inspector to make a preliminary review
33 of the complaint, and shall notify the complainant within two
34 working days of the receipt of the complaint of the name of the
35 inspector. Unless the department determines that the complaint is
36 willfully intended to harass a licensee or is without any reasonable
37 basis, it shall conduct an onsite inspection or investigation within
38 10 working days of the receipt of the complaint. In any case in
39 which the complaint involves a matter that creates a threat of
40 imminent danger of death or serious bodily harm, the department

1 shall make an onsite inspection or investigation within 24 hours of
2 the receipt of the complaint. In any event, the complainant shall be
3 promptly informed of the department's proposed course of action
4 and of the opportunity to accompany the inspector on the
5 inspection or investigation of the facility. Upon the request of
6 either the complainant or the department, the complainant or his
7 or her representative, or both, may be allowed to accompany the
8 inspector to the site of the alleged violations during his or her tour
9 of the facility, unless the inspector determines that the privacy of
10 any patient would be violated.

11 (2) When conducting an onsite inspection or investigation
12 pursuant to this section, the department shall collect and evaluate
13 all available evidence and may issue a citation based upon, but not
14 limited to, all of the following:

15 (A) Observed conditions.

16 (B) Statements of witnesses.

17 (C) Facility records.

18 (3) Within 10 working days of the completion of the complaint
19 investigation, the department shall notify the complainant and
20 licensee in writing of the department's determination as a result of
21 the inspection or investigation.

22 (b) (1) When the department provides notice pursuant to
23 paragraph (3) of subdivision (a), the department shall notify the
24 complainant of the right to an informal conference.

25 (2) A complainant who is dissatisfied with the department's
26 determination regarding a matter that would pose a threat to the
27 health, safety, security, welfare, or rights of a resident may, within
28 five business days after receipt of the notice, notify the director in
29 writing of his or her request for an informal conference. The
30 informal conference shall be held with the designee of the director
31 for the county in which the health facility that is the subject of the
32 complaint is located. The health facility may participate as a party
33 in the informal conference. The director's designee shall notify the
34 complainant and licensee of his or her determination within 10
35 working days after the informal conference and shall notify the
36 complainant and licensee in writing of the appeal rights provided
37 in subdivision (c).

38 (c) If the complainant is dissatisfied with the determination of
39 the director's designee, the complainant may, within 15 days after
40 receipt of this determination, notify in writing the Deputy Director

1 of the Licensing and Certification Division of the department, who
2 shall assign the request to a representative of the Complainant
3 Appeals Unit for review of the facts that led to the determination.
4 As a part of the Complainant Appeals Unit's independent
5 investigation, and at the request of the complainant, the
6 representative shall interview the complainant in the district office
7 where the complaint was initially referred. Based upon this review,
8 the Deputy Director of the Licensing and Certification Division of
9 the department shall make his or her own determination and notify
10 the complainant and the facility within 30 days.

11 (d) For purposes of this section, "complaint" means any oral
12 or written notice to the department, other than a report from the
13 facility, of an alleged violation of applicable requirements of state
14 or federal law or an allegation of facts that might constitute a
15 violation of applicable requirements of state or federal law.

16 SEC. 4. Section 1280 of the Health and Safety Code is
17 amended to read:

18 1280. (a) The ~~state~~ department may provide consulting
19 services upon request to any health facility to assist in the
20 identification or correction of deficiencies or the upgrading of the
21 quality of care provided by the health facility.

22 (b) The ~~state~~ department shall notify the health facility of all
23 deficiencies in its compliance with this chapter and the rules and
24 regulations adopted hereunder, and the health facility shall agree
25 with the ~~state~~ department upon a plan of correction that shall give
26 the health facility a reasonable time to correct these deficiencies.
27 *The time given to the health facility to correct the deficiencies may*
28 *not exceed 180 calendar days.* If at the end of the allotted time, as
29 revealed by inspection, the health facility has failed to correct the
30 deficiencies, the director may take action to revoke or suspend the
31 license.

32 (c) (1) In addition to subdivision (a), if the health facility is
33 licensed under subdivision (a), (b), or (f) of Section 1250, and if
34 the facility fails to implement a plan of correction that has been
35 agreed upon by both the facility and the ~~state~~ department within a
36 reasonable time, the ~~state~~ department may order implementation
37 of the plan of correction previously agreed upon by the facility and
38 the ~~state~~ department. *The time given to the health facility to*
39 *implement the plan of correction may not exceed 180 calendar*
40 *days.* If the facility and the ~~state~~ department fail to agree upon a

1 plan of correction within a reasonable time, *which may not exceed*
2 *60 days*, and if the deficiency poses ~~an immediate and substantial~~
3 *a significant* hazard to the health or safety of patients, then the
4 director may take action to order implementation of a plan of
5 correction devised by the ~~state~~ department. The order shall be in
6 writing and shall contain a statement of the reasons for the order.
7 If the facility does not agree that the deficiency poses ~~an immediate~~
8 ~~and substantial~~ *a significant* hazard to the health or safety of
9 patients, or if the facility believes that the plan of correction will
10 not correct the hazard, or if the facility proposes a more efficient
11 or effective means of remedying the deficiency, the facility may,
12 within 10 days of receiving the plan of correction from the
13 department, appeal the order to the director. The director shall
14 review information provided by the facility, the department, and
15 other affected parties and, within a reasonable time, *shall* render
16 a decision in writing that shall include a statement of reasons for
17 the order. During the period *in* which the director is reviewing the
18 appeal, the order to implement the plan of correction shall be
19 stayed. The opportunity for appeal provided pursuant to this
20 subdivision shall not be deemed to be an adjudicative hearing and
21 is not required to comply with Section 100171.

22 (2) If any condition within a health facility licensed under
23 subdivision (a), (b), or (f) of Section 1250 poses ~~an immediate and~~
24 ~~substantial~~ *a significant* hazard to the health or safety of patients,
25 *or if the department receives a complaint about a similar condition*
26 *within 12 months of a complaint or a deficiency, or if completion*
27 *of a plan of correction for a significant hazard has not been*
28 *documented by the department within 180 calendar days of the*
29 *deficiency*, the ~~state~~ department may order either of the following
30 until the hazardous condition is corrected:

31 (A) Reduction in the number of patients.

32 (B) Closure of the unit or units within the facility that pose the
33 risk. If the unit to be closed is an emergency room in a designated
34 facility, as defined in Section 1797.67, the ~~state~~ department shall
35 notify and coordinate with the local emergency medical services
36 agency.

37 (3) The facility may appeal an order pursuant to paragraph (2)
38 by appealing to the superior court of the county in which the
39 facility is located.

1 (4) Paragraph (2) shall not apply to a deficiency for which the
2 facility was cited prior to January 1, ~~1994~~ 2004.

3 (d) Reports on the results of each inspection of a health facility
4 shall be prepared by the inspector or inspector team and shall be
5 kept on file in the ~~state~~ department along with the plan of
6 correction and health facility comments. The inspection report
7 ~~may include a recommendation~~ shall include a recommended date
8 for reinspection *in order to ensure compliance with the plan of*
9 *correction. The reinspection may not be more than 180 days after*
10 *the citation of deficiency. A reinspection may be conducted during*
11 *a periodic inspection required pursuant to Section 1279.*
12 Inspection reports of an intermediate care
13 facility/developmentally disabled habilitative or an intermediate
14 care facility/developmentally disabled—nursing shall be provided
15 by the ~~state~~ department to the appropriate regional center pursuant
16 to Chapter 5 (commencing with Section 4620) of Division 4.5 of
17 the Welfare and Institutions Code.

18 (e) All inspection reports and lists of deficiencies shall be open
19 to public inspection when the ~~state~~ department has received
20 verification that the health facility has received the report from the
21 ~~state~~ department. All plans of correction shall be open to public
22 inspection upon receipt by the ~~state~~ department.

23 (f) In no event shall the act of providing a plan of correction,
24 the content of the plan of correction, or the execution of a plan of
25 correction, be used in any legal action or administrative
26 proceeding as an admission within the meaning of Sections 1220
27 to 1227, inclusive, of the Evidence Code against the health facility,
28 its licensee, or its personnel.

29 SEC. 5. Section 1280.1 of the Health and Safety Code is
30 amended to read:

31 1280.1. (a) If a licensee of a health facility licensed under
32 subdivision (a), (b), or (f) of Section 1250 fails to correct a
33 deficiency within *the lesser of 180 days or* the time specified in a
34 plan of correction, the ~~state~~ department may assess the licensee a
35 civil penalty in an amount not to exceed fifty dollars (\$50) per
36 patient affected by the deficiency for each day that the deficiency
37 continues beyond the date specified for correction. *For purposes*
38 *of this section, failure to correct a deficiency may be substantiated*
39 *by a subsequent complaint about a condition similar to the one that*
40 *gave rise to the deficiency.* The civil penalties shall be assessed

1 only for deficiencies that pose ~~an immediate and substantial~~ *a*
2 *significant* hazard to the health or safety of patients. If the licensee
3 disputes a determination by the ~~state~~ department regarding alleged
4 failure to correct a deficiency or regarding the reasonableness of
5 the proposed deadline for correction, the licensee may, within 10
6 days, request a hearing pursuant to Section 100171. Penalties shall
7 be paid when appeals pursuant to those provisions have been
8 exhausted.

9 (b) This section shall not apply to a deficiency for which a
10 facility was cited prior to January 1, 1994.

11 SEC. 6. Section 1280.2 of the Health and Safety Code is
12 amended to read:

13 1280.2. (a) No deficiency cited pursuant to paragraph (2) of
14 subdivision (b) of Section 1280 or Section 1280.1 shall be for the
15 failure of a facility to meet the requirements of the California
16 Building Standards Code if, as of January 1, 1994, the hospital
17 building was approved under Chapter 12.5 (commencing with
18 Section 15000) of Division 12.5, or if the hospital building was
19 exempt from that approval under any other provision of law in
20 effect on that date.

21 (b) It is the intent of the Legislature that neither the
22 amendments made to Section 1280 by ~~the act that added this~~
23 ~~section~~ *Chapter 1152 of the Statutes of 1993*, nor Section 1280.1
24 shall be construed to require the retrofitting of hospital buildings
25 built prior to January 1, ~~1994~~ 2004, to meet seismic standards in
26 effect on that date.

27 SEC. 7. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.